

Fermentation and Ossification in Hungarian International Law

Barnabás A. Rácz

Nemzetközi Jog [International Law]. By György Haraszti, Géza Herczegh and Károly Nagy. Budapest: Tankönyvkiadó, 1976. Pp. 491.

Political events in the seventies show that international conflicts have been increasing; nevertheless, growing global inter-dependence and expanding international intercourse have had a vitalizing effect upon international law in general. The Soviet Bloc is no exception, and the recently published volume is an expression of this growing interest in international law in Hungary. The new university textbook, written by the three leading professors in the field,¹ is the second edition of a work published by the same authors in 1971.² Even though there are no major structural differences between the two editions, the present work enlarges on some important topics, reorganizes some other parts successfully, and incorporates the most current material.³

The authors cover the traditional areas of international law and present the material with a double objective: the book is written both as a textbook as well as a handbook for those who have a practical interest in the discipline.⁴ The nature and characteristics of international law are discussed exclusively on a Marxist theoretical basis. However, in the historical part the political approach is somewhat reduced; for example, the "imperialist" and "capitalist" phases were combined and some Lenin quotations were omitted. In the area of inter-state cooperation, emulating Soviet doctrine, the authors stress the legal nature of international cooperation, invoking especially Articles 1(3) and 55 of the United Nations Charter and the 1970 General Assembly resolution regarding friendly relations among states.⁵ According to the latter, cooperation between states must be carried out without discrimination, "irrespective of the differences in their political, economic and social systems" (Ch. III, pp. 93-94). In sharp contrast to this position and the concept of

peaceful coexistence, but with the usual indifference to the contradiction, wars of national liberation are extended legal status, which is a standard Soviet position (p. 91).⁶

The territorial questions are examined carefully, particularly the rules of territories under special status; for example, the arctic areas, territories under international administration, and outer-space.⁷ The law of the sea gained new attention, and the growing debates regarding the legal regime of the territorial sea, the continental shelf, and the 200-mile special fishing zones, received up-to-date analysis. An entirely new section (Ch. V, p. 17) examines the environmental issues as being increasingly subject to the realm of international law. This is a new sign of awareness in the Socialist states, which until recently were largely indifferent toward the economic and legal implications of the rising global environmental problems. Hungarian interest in the question is easily understandable, considering that the country is extremely poor in natural resources, shown by the example that 94 to 96 percent of its total surface water originates from abroad. Although the authors, conforming to Soviet doctrine, emphasize the importance of the domestic jurisdiction in this issue *de lege lata* (current law), they also stress the desirability of international regulation *de lege ferenda* (future law).

The position of the individual under international law is adequately covered, but this part is heavily influenced by ideological considerations (Ch. VI). The growing legal protection of human rights is discussed in a historical perspective, ranging from the Universal Declaration of Human Rights in 1948 to the most recent Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights.

The exhaustive analysis of international treaties is one of the best parts of the entire work. It was written by György Haraszti, the most outstanding scholar of international law in Hungary today. His contributions, especially in the area of international treaties, are widely known.⁸ He bases the discussion on customary international law as the prime source of the treaty law, and also examines in depth the extensive codification efforts culminating in the Vienna Convention on the Law of the Treaties in 1969. Haraszti maintains that the latter is not operational yet, but it represents a consensus of the international community. New or enlarged topics in this part deal with the capacity to contract, the nullity and voidability of treaties, the legal consequences of the lack of validity, and the modification and termination of international agreements (Ch. VII, pp. 217-20; pp. 226-27; pp. 237 and 248).

A significant portion of the volume is devoted to the discussion of

international organizations (Ch. IX and X), written by another eminent scholar, Géza Herczegh, whose studies are also known in the West.⁹ The material about the United Nations has been enlarged, and the analysis of many aspects of the organization is more thorough than in the former edition. In the latter the method of approach was mostly structural and descriptive, but now there is a stronger emphasis on the functional analysis of the organization. The history and background of the United Nations are explored in greater depth, including information about the Dumbarton Oaks Consultation and Proposals. The presentation of the structural material has improved considerably, together with the political analysis. The latter, however, has remained ideologically colored (Ch. X, pp. 294–95).

With respect to the infrastructure of the General Assembly, a comprehensive examination of the committee system opened up hitherto unknown areas. Careful attention was given to the main and *ad hoc* committees, as well as to the subsidiary organs of the Assembly. Furthermore, the peacekeeping operations, including the most recent ones,¹⁰ received a more elaborate treatment. The scholarship has improved, insofar as the presentation is less biased.¹¹ The material dealing with the Economic and Social Council underwent significant modification. Greater attention to this agency does better justice to a neglected area in the former edition, and it also reflects the more active participation of the Council of Mutual Economic Cooperation¹² in the non-political activities of the United Nations.

The legal aspects of the international organizations unaffiliated with the United Nations are treated in a new, independent chapter (Ch. X). There is a clearer classification of these organizations, corresponding to the economic and political systems of the member states. The authors divide these institutions into three groups: organizations of the socialist states; developing countries' organizations, and capitalist organizations. Some of these are mentioned only briefly, whereas the COMECON, understandably, receives elaborate treatment, together with "other organizations of the socialist states with an economic character" which aim at the coordination of commercial and business activities in certain specialized sectors of the COMECON (pp. 331–35).

The questions of legal liability in international law are explored in a new part of the volume (Ch. XI), written by Károly Nagy.¹³ The analysis focuses on the nature and concept of international legal liability, as well as on the consequences of the violation of legal norms and on the subjects of such liability. The historical material includes excellent examples, unlike other parts of the work, and there is an absence of

politically tinged cases, although there would have been ample opportunity for this. Nagy incorporates references to recent codification efforts and some Western theories, but without providing explicit documentation.¹⁴

The discussion of the legal regulation of war and neutrality is heavily influenced by ideological and diplomatic considerations (Ch. XIII). Following Soviet doctrine, the authors claim that wars in general are outlawed by the United Nations Charter as a matter of positive law, with the exception of national liberation wars. The presentation of the legal issues relating to aggression is detailed, culminating in the General Assembly resolution which approved the definition of aggression as recommended by the Special Committee.¹⁵ The authors assert with some justification that the end product of the United Nations Codification efforts reflects Soviet influence to a large extent (p. 405).

The earliest Marxist international law text published in Hungary¹⁶ still showed the spirit of Stalinism and was heavily beset by political influences. The first edition of the present volume represented a significant departure from this work. It had de-Stalinized international law, but kept the Marxist-Leninist theoretical basis. The 1976 edition retains the main orientation of the first publication, but improves on the quality. The analysis is more scholarly in some areas and the political material has been further reduced. It is a positive achievement that the authors systematically used the extensive recent codification efforts throughout the different United Nations agencies. Although some of these did not yield significant results at the time of writing, the proceedings generally furthered the cause of legal order in the world, and their discussion contributes to the comprehension of international law. Likewise, the inclusion of the United Nations Charter and the Statute of the International Court of Justice, as well as the index, has improved the quality of this well organized and well-written volume.

Nevertheless, some of the earlier edition's serious deficiencies still remain. The lack of documentation and footnoting, as well as the absence of a bibliography, is unacceptable. There are only scant references to cases dealing with international law issues, and even the most celebrated cases are frequently not cited. These shortcomings create a distorted view of international law, resembling those Western works which largely disregard the importance of the Soviet doctrine. The presentation of Western theories and the views of non-Soviet writers is painfully inadequate, as they are almost exclusively referred to in a critical context.

Hungarian international law, in general, shows no significant depar-

ture from Soviet doctrine.¹⁷ However, a wider and more diversified selection of topics has engendered a larger number of publications and some valuable contributions in recent years. This book is a product of that new vitality, and although the authors' efforts demonstrate that the discipline shows some scholarly growth, it still remains politically constrained.¹⁸

Beginning with the 1974 Central Committee Resolutions, and continuing with the Eleventh Party Congress in 1975, the Hungarian Socialist Worker Party¹⁹ initiated a new centralizing policy, particularly in the economic organization and to a lesser extent in the political-cultural life. Even if this re-centralization did not affect international law as a discipline crucially, it did contribute to the thwarting of the forward momentum which the early seventies produced. Expectations regarding a more liberal research orientation did not materialize completely, and there is considerable ossification in Hungarian international law today. Short of basic changes in the Hungarian regime, the politically sensitive field of international law is unlikely to break completely with the Soviet theoretical model; but it might produce a somewhat more empirical and less ideologically influenced scholarship.

NOTES

1. University Professor György Haraszti, Doctor of the State and Law Sciences, authored Chapters I, III, VII, and XII; University Docent Géza Herczegh, Candidate of the State and Law Sciences, wrote Chapters II, IX, X, and XIII; Docent Károly Nagy, Candidate of the State and Law Sciences, wrote Chapters IV, V, VI, VIII, and XI. Haraszti also edited the volume.
2. Haraszti, *et al.*, *Nemzetközi Jog* (Budapest: Tankönyvkiadó, 1971), paperback.
3. For a short review in Hungarian by István Timár, see *Magyar Nemzet* (Budapest), July 29, 1976.
4. There is no other comprehensive work on the market in Hungary today.
5. Res. 2625 (XXV) and ANNEX, entitled "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations," see *United Nations Yearbook* (New York: Office of Public Information, United Nations), Vol. XXIV (1970), pp. 788-792.
6. See, for example, Grigorij I. Tunkin, *Questions of Theory of International Law*, in Hungarian (Budapest: Közgazdasági és Jogi Könyvkiadó, 1963).
7. This question has strategic significance and hence it is an especially sensitive area. For a Hungarian contribution in space law, see Gyula Gál's excellent work, *Space Law* (Budapest: Közgazdasági és Jogi Könyvkiadó, 1964).

8. See György Haraszti, *The Termination of the International Treaties* (Budapest: Közgazdasági és Jogi Könyvkiadó, 1973), and also his *Fundamental Questions of the Interpretation of International Treaties* (Budapest: Közgazdasági és Jogi Könyvkiadó, 1965).
9. See, for example, Géza Herczegh, *General Principles of Law and the International Legal Order* (Budapest: Akadémiai Kiadó, 1969), in English.
10. For example, the United Nations peacekeeping operations on the Golan Heights and in the Sinai Peninsula.
11. See, for example, pp. 308–309 of the reviewed work.
12. Hereafter abbreviated as COMECON.
13. See also Károly Nagy, *Questions of Analogy and Gaps of Law in International Law*, Papers published on the 50th anniversary of the professorship of László Buza (Szeged, 1958).
14. For example, references to Anzilotti and Guggenheim, p. 359.
15. See Res. 3314 (XXIX), 2319th Plenary Meeting, December 14, 1974.
16. László Buza and Gyula Hajdu, *Nemzetközi Jog* (Budapest: Tankönyvkiadó, 1954; fourth edition in 1968).
17. The most influential Soviet writer appears to be Grigorij I. Tunkin. See *op. cit.*
18. See Barnabás Rácz, "The Changing Status of International Law in Hungary," *East Europe*, 21 (July–August, 1972), 11–22.
19. In Hungarian, Magyar Szocialista Munkáspárt (MSZMP).

SPECIAL SECTION

Toldi

An Epic Poem (1846)

by János Arany

translation by

Watson Kirkconnell

in collaboration with

Tivadar Edl

(continued from Vol. IV, No. 2)